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Testimony of Barry C. Hawkins
Real Property Section
Connecticut Bar Association

In SUPPORT of

SB 900

An Act Concerning the Adoption of the
Uniform Partition of Heirs Property Act

Judiciary Committee
February 25, 2015

Members of the Judiciary Committee:

My name is Barry C. Hawkins, a Past President of the Connecticut Bar Association and a partner in the law firm of Shipman & Goodwin LLP, resident in its Stamford office. I am a Uniform Law Commissioner for the State of Connecticut, serving in that position at the pleasure of the Governor since 1999. I served as the Division Chair of the National Uniform Law Commission for the Drafting Committee on the Uniform Partition of Heirs Property Act of 2013 which is before you today as Raised Bill 900. I am also here representing the Connecticut Bar Association's Real Property Section which has also endorsed this Act.

The Uniform Partition of Heirs Property Act, is a very limited scope act designed to address a problem faced primarily by families of modest to moderate means, who are generally not likely to seek and utilize sophisticated and expensive legal assistance to avoid this relatively common and potentially devastating problem of passing Title to family owned real estate.

What is the problem to be solved with this brief but important act? Heirs Property is the phrase often used to describe real estate which is owned by tenants in common, where each of the owners own an individual share of the property along with all of the other owners. These owners of fractional shares are usually related to one another.

In contrast with Joint Tenancy, which is especially popular between husbands and wives and other smaller, closely related family groupings, and which requires a clearly stated intention to have the surviving members inherit the share of those who die first, tenancy in common is the legal default consequence for all multiple owners who do not clearly indicate a different result. It is a very common result of dying without a will and having the court divide the ownership among the surviving heirs by the laws of intestate succession.

Wealthier people of course are more likely to have sophisticated wills and trusts and to use other more complicated devices such as having detailed common tenancy agreements, family partnerships or limited liability companies to allow multiple owners to own real estate with greater efficiency and a more certain result. With intestate succession and sometimes even with simple wills leaving real estate "to all of my children in equal shares", the most common result for the less affluent is very often that many many individuals, most of them related end up owning a small share of the family home or farm. As the succession remains without a more complex will or other agreement for future generations, the ownership becomes even more fractured, with some owners ending up owning very tiny percentages.

Many times the owners do not understand the nature of their ownership such as who manages the property, who pays the insurance and taxes, and how do you reimburse those owners who do those things and make those payments. The owners of such property who have lawyers to advise them, usually recognize the instability of such an ownership and are advised to adopt suitable alternative arrangements. Unfortunately the far more numerous owners of Heirs Property are of very modest means and they are particularly vulnerable to the burdens and problems of this unstable ownership.

The most troubling aspect of this unstable ownership pattern with numerous relatives owning only a small fractional share, is that every such owner holds in his or her hands the seeds of near total ruin for the economic prospects of all other owners. Each owner of a fractional share of such Heirs Property may sell that share to a speculator who can then take advantage of our existing partition of real estate laws to force a sale of the property upon all of the other owners, often on terms that are very unfair to the other owners. These current partition laws allow the speculators, and sometimes unscrupulous heirs who are in league with them, to achieve an undeserved windfall by buying the family home or family farm at a mere fraction of its true value.

The unscrupulous do this damage by taking advantage of the fact that our existing partition laws favor a result in which a forced auction sale is a very common result since it is so difficult to achieve a physical division of real estate (often called "partition in kind" as contrasted with a "partition by sale") among so many owners. In larger farms, partition in kind sometimes can work, but even there the results can be unattractive since economies of scale are often lost by breaking up the ownership of large holdings.

In the vast majority of cases the default result is a partition by sale, which often ignores the history and family ties or cultural values tying most of the owners to the property. Even where the overwhelming majority of the owners would prefer to keep on owning the family property, the court mandated results will often call for a forced sale, often a sale by auction where the bidding will be controlled by a speculator seeking to make a windfall, either acting alone or in a partnership with one or more of the family owners. These "arrangements" are often secretive and remain undisclosed to the other owners.

Courts have approved such forced "auction" results where the evidence actually showed that the property was to be sold to the relative who petitioned the court for the sale, even though the price to be paid to the other owners was only 20% of its true value. To add insult to injury, the award by the court on such a forced sale quite often calls for the costs of the sale and even the legal fees for the partition lawsuit requiring the sale to be reimbursed to the fractional owner receiving all or part of the windfall and ending up purchasing the property from the owners who did not wish to sell. Not only do those owners have to pay for their own attorney to object to a forced sale, if they lose, they
also have to pay indirectly for the legal fees of the successful fractional owner (and/or speculator) who forced the unwanted sale upon them. The Bill before you is designed to address these issues in fair and balanced ways which help balance the scales of justice and prevent the unscrupulous from forcing such unfair results.

I have primarily addressed my remarks on this Bill to the need for such legislation, which may not be immediately apparent to those who have not been harmed by an unfortunate result in the legal partition process when applied to Heirs Property. The procedures for addressing these harms with respect to Heirs Property are relatively short and straight forward in the Bill. **It** applies only to Heirs Property and leaves the existing Connecticut law of partition unchanged except when it relates to Heirs Property. as carefully defined in the act itself.

For Heirs Property, this uniform bill provides a series of rules which are designed to make sure that a fractional share owner can indeed still be able to trigger a mechanism by which he or she can dispose of a fractional share but may do so only in a manner which is fair to all of the owners whether or not they are related, does not create a windfall gain for the owner who wants to dispose of a share and most significantly, does not result in a forced loss of wealth, even if that wealth is meager for many or most of the owners. The Bill does contain a bias against any party seeking to force a partition sale by litigation and thus places a premium on the value to all owners of voluntarily agreeing upon a fair and reasonable plan for preserving ownership for all of the owners or making sure that if the property is to be sold in order to divide the ownership that the method chosen will reward all owners fairly according to their ownership interest.

It is important to remember that for many people their ownership interest in a family farm, plot of land or home is a very significant part of their individual net worth. Heirs Property is not just a rural problem for the American South and Southwest. One of the lessons learned the hard way from Hurricane Katrina in New Orleans, is that in the face of a natural disaster, the ownership tangles and challenges of many urban homes, owned as Heirs Property, greatly impeded their title marketability and interfered with the owner's access to loan programs and grant money.

The problems associated with the partition of such property are even .found in the New England States. In Maine the problem in rural areas is so common that they have even coined a name for the affected property, calling it "heirlocked property".

This Act has been modified from the Uniform version as a result of last year's legislative process. Section 14 has been added to the Uniform Act to make it clear under certain circumstances, Probate Judges may retain jurisdiction over such property when it is a part of the decedent's estate. Under those specific circumstances the more robust partition procedures set forth in this Act will be administered by the Probate Judge having jurisdiction over such an estate.

Raised Bill 900 provides a measured and reasonable path towards reforming the existing state partition law as applied to Heirs Property and in doing so will promote the good and welfare of the citizens of Connecticut.